

Brand X Internet



Santa Monica, CA 90403
927 6th Street
<http://www.brandx.net>

Fax: 310-395-9924
Phone: 310-395-5590
E-mail: info@brandx.net

December 1, 2000

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: GN DOCKET NO. 00-185

Dear Ms. Salas:

As president and founder of Brand X Internet LLC ("Brand X"), a local ISP in Southern California, I am writing to encourage the FCC to support competition in all forms of high speed Internet access, including cable modem, DSL, radio, and any other form of high speed communication which transits the public right of way. When big companies like ATT and Time Warner talk about closed access to data lines, we're the ones they want to lock out.

We do not have a legal department, nor do we have lobbyists on staff. We depend on state and federal regulators to protect us from the larger companies who frequently abuse favors and franchises which they are able to obtain through their well financed lobbying mechanisms. If companies like ATT could be depended on to regulate themselves through "market mechanisms", the Sherman Anti-Trust Act would not be required. We are not afraid to compete with the big guys in a free market, because we are faster, more efficient, and generally offer better service at better prices. Every customer that signs on with us is a customer who has chosen NOT to do business with the big guys like ATT. As a business, we are not afraid of them. It is in the regulatory arena that they have the advantage, and that is where we need your protection.

Brand X Internet is a local service provider based in Santa Monica, California. We serve the greater Los Angeles area, and a large portion of Southern California, an area of perhaps 15 million residents. Our customers include several school districts, the Catholic Archdiocese of Los Angeles, the City of Santa Monica, as well as many large and small businesses and individuals.

High speed access represents 90% of our revenue, split roughly evenly between T1 lines, colocation, and DSL service in Verizon areas.

Brand X competes with Time Warner, Adelphia, ATT and other cable companies in our area in the provision of Internet Service. Without access to cable modem service, however, Brand X will be unable to provide high speed internet service in those areas where DSL service is unavailable, whether these services are unavailable for technical or other reasons.

Predatory pricing by Pac Bell (SBC) prevents us from providing service in Pac Bell areas in roughly half the greater Los area. The retail price of a DSL line is \$39.95 with Internet from Pac Bell. Pac Bell will sell us this same line without Internet for \$39. This leaves us a margin of 95 cents, which is not enough to cover costs. The price Pac Bell offers to its own in-house ISP Pac Bell Internet is \$25. What this means is that in roughly half our local area we are unable to offer any high speed consumer access, while Pac Bell has signed up more than 160,000 customers.

Additionally, while we have a thriving DSL business in Verizon areas, roughly 20% of the market can not be reached due to distance limitations.

What this means is that between predatory pricing from Pac Bell (SBC) and technical limitations in Verizon areas, we are unable to reach 60% of our home market with any kind of high speed access.

For this reason we have been exploring the possibility of providing access to customers access through alternative means such as cable and Satellite.

Satellite service is prohibitively expensive. I recently took bids on connecting a nearby location to our office via satellite at T1 speed. While this would have cost \$500 for T1 service through MCI/Worldcom, the comparable Satellite cost was from \$10,000 to \$25,000 per month. No customer is willing to bear such a high costs particularly because the performance is not good due to high lag times. This easily explains why nobody is using satellite access in this area, except for one way downstream feeds. Satellite is not a workable solution for high speed access at this time.

Earlier this year, on behalf of Brand X, I wrote and formally requested that ATT and TIME WARNER interconnect and provide cable modem service in the form of line services and/or unbundled network elements. A copy of my proposal is attached.

ATT refused access to its network, saying that it was not required to do so. ATT refused to negotiate or interconnect or sell us unbundled network elements, lines, or any other kind of service. A copy of the ATT letter is attached.

Time Warner responded in a more friendly way, saying that they eventually planned to open their network to access from competitive providers.

Time Warner has provided to me written contract proposals which I feel are grossly unfair to Internet Providers, for two reasons: first, because they are financially disadvantageous, and second, because it is conceded by Time Warner staff that the arrangements will not be the same for all ISP's. I fear that if we do business with Time Warner we will be faced with the same kind of predatory pricing practices we currently suffer from in Pac Bell areas, in that the in-house ISP will pay far lower prices for line services that we would, making it impossible for us to compete.

I believe that uniform pricing is essential to establishing a level playing field which will benefit consumers by encouraging competition. Without fair and uniform pricing, any pretense at an open network is false.

In numerous conversations I have had with them, Time Warner staff have repeatedly said that they favor open access, but while we have repeatedly stated our willingness to provide access to any customer anywhere in the country on any network, we have been unable to make any headway in actually providing any services.

Most recently, yesterday (11/29/00) I had a conversation with Time Warner attorney Bonnie Blecha, in which I reiterated our commitment to cable modem service and our desire to participate in the supposed trials in Columbus Ohio, or in any other location. Bonnie Blecha stated that this would not be possible.

At various times Time Warner staff have indicated that extended trials would be necessary over a period of years in order to validate the concept of open access. For this reason and for reasons relating to various contracts that Time Warner had signed with Roadrunner, a partially owned semi-subsubsidiary, it would not allow any open access in Southern California until 2002. Bonnie Blecha confirmed this statement in our conversation yesterday (11/29/00).

As a technical person and an expert and professional in the field of providing high speed access services, I do not find it credible that any kind of trials should be required at all, unless these are simply

a training period for inexperienced Time Warner staff who are entering a new field which is unfamiliar to them.

The technology for allowing multiple ISP's to share the same network has been demonstrated in the area of Internet already, where many companies share the same backbone lines and facilities. We have many different customers sharing our network, and we frequently share facilities with other ISP's. One example of this is 30 or more ISP's providing DSL service over the Verizon network in Los Angeles. Another example is cooperatively owned modem equipment in our Marina del Rey facility, which is shared by several ISP's. Billing and traffic issues have to be addressed, but it is not a big problem. These are the kinds of problems we solve every day in our business.

If providers such as ATT and Time Warner are not up to the challenge or are not able to solve technical problems, it is my opinion that they should step aside and let more competitive companies with better technical expertise step in and take the lead in establishing open access policies.

I have spoken recently to the people at the Open Net Coalition, and I support their proposals, which I will repeat here:

KEY POINTS IN SUPPORT OF A NATIONAL OPEN ACCESS POLICY

The FCC must mandate that open access is provided by all cable broadband providers according to basic minimum standards that are verifiable and enforceable, and which together support a viable business model for ISPs. Key elements of this business model must include interconnection, business relationships, customer interfaces and pricing of access. These elements must be available to ISPs on a nondiscriminatory basis.

At a minimum, the national and enforceable open access policy must include these features:

- Consumers of broadband cable services should have a choice among multiple ISPs
- Cable broadband providers must make high speed transmission available to any requesting ISP on a nondiscriminatory basis, and must allow ISPs to interconnect with cable networks in the most efficient, technically feasible manner available, including, but not limited to, at the headend. ISPs should also be able to add new features, functions and services without the cable operator's approval, as long as there is not any harm to the cable network.
- The number of ISPs utilizing a particular platform should be a function of the number of ISPs that request access, and not subject to any particular limit imposed by the cable operator.
- Cable broadband providers must negotiate at arms length nondiscriminatory commercial arrangements with both affiliated ISPs and unaffiliated ISPs, (including "first screen" placement).
- Consumers must be able to alter their Internet experience as they see fit, including freely (and easily) reconfiguring their "first screen" or "start page"; unaffiliated ISPs must be free to offer their browser of choice and start page to their customers without any restrictions or requirements imposed by the cable broadband provider.
- Customers of unaffiliated ISPs must be able to access content through any interface or portal they choose to use.

- Customers of unaffiliated ISPs must have a choice, through their preferred ISP, of Internet connections at different speeds.
- Cable operators must provide nondiscriminatory network management of their system. - ISPs should be allowed to purchase broadband backbone transport services of their choice; the cable broadband provider must not be permitted to require an unaffiliated ISP or its customers to install any software on a customer's PC or other device to use the underlying broadband transport service.
- Consumers choosing an unaffiliated ISP must not be required to subscribe to any cable service (e.g., video programming) of the cable broadband provider in order to utilize the high-speed transport service; however, consumers choosing an unaffiliated ISP must be permitted to subscribe to any cable service (e.g., video programming) which would otherwise be available to them or is otherwise generally available.
- ISPs should be able to market their services, including the underlying broadband transport service, directly to all cable customers. - ISPs should have the choice of operating on a national, regional or local basis.
- ISPs should have the opportunity for a direct relationship with the customer, including (but not limited to) billing for the underlying broadband transport service.
- ISPs should be allowed to provide video streaming and there should be no discriminatory restrictions on provision of content.
- ISPs must be able to fully maintain brand recognition in their offerings, and may not be required to "co-brand" or otherwise display the cable broadband provider's brand.

The arguments that ATT makes now against opening up high speed Internet, are the same ones that ATT made against opening up long distance a few years back. They made it sound like once the network was opened up, substandard equipment would be installed, no investments would be made, and you practically wouldn't even be able to make a phone call.

That certainly did not happen.

Everyone now agrees that competition has made long distance service cheaper and better than it was before competition. I can now make phone calls anywhere in the country for 7 cents a minute, and I can call England for only a dime. You couldn't do that when ATT had a monopoly.

The same logic applies to Open Access. I look at competition as a form of "Least Impact Regulation", where regulators use market forces to harness these big companies, make them pound heads against each other, and through competition, delivery to consumers the best in services and pricing. Companies that do a bad job will close, and those that do a good job, will prosper. In this environment, everyone benefits.

At Brand X we believe we offer good services and good values, and in a competitive market, we believe we will thrive.

For the country as a whole, it is clear that Open Access, free choice and competition are the best policies.

I hope that you will be able to support open access.

Sincerely,

Jim Pickrell
President
Brand X Internet LLC
jimp@brandx.net
www.brandx.net

8/4/00

Jim Pickrell
President
Brand X Internet LLC
927 6th Street
Santa Monica, CA 90403
(310) 395-5500
email info@brandx.net

Ms. Tina Davis
VP and Assistant General Counsel
Time Warner Telecom of California L.P.
5700 South Quebec Street
Greenwood Village CO 80111
(303) 566-1279

Peter Casciato
Attorney for Time Warner Telecom of CA, L.P.
8 California Street, Suite 701
San Francisco, CA 94111
(415) 291-8661
pscianto@rcn.com

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Purpose: The purpose of this letter is to outline general terms for an interconnection agreement which would allow customers of Time Warner's Cable Systems to select Brand X Internet LLC ("Brand X") as their Internet Service Provider ("ISP"). Time Warner would treat Brand X on the same financial and technical basis as its own in-house ISP and affiliate(s), and would be paid for line services under the same terms and conditions Time Warner's current ISP affiliate.

This agreement would allow Time Warner to increase profits by reducing expenses relating to its in-house ISP, as well as bring in new customers and new profits through its interconnection with Brand X. Time Warner will increase its profits because line charges will make all ISP customers equally attractive no matter which ISP provides the Internet services.

General Proposal

Brand X will be offered as an alternative to Time Warner's ISP affiliate. Time Warner will be paid for access to lines and other services, but will allow Brand X to connect to the Time Warner network and provide Internet Access to Time Warner customers on a non-discriminatory basis. Brand X will connect to the Time Warner network by co-locating routers and other equipment at Time Warner head end offices, and routing traffic from these locations back to the Brand X network center in Marina del Rey.

Sales Proposal

1. All customers who call Time Warner and ask about cable internet will be informed that they have a choice of ISPs. A script for this explanation will be negotiated on a non-discriminatory basis. This script will be read to all customers or potential customers who inquire about ISP services.
2. Time Warner will create a web page listing alternative Internet Providers. All customers who ask about Internet Services will be given the address and referred to this page.
3. A commission for Brand X signups from Time Warner will be negotiated. This commission will be offered on a non-discriminatory basis and will be the same as the commission paid by Time Warner affiliates to Time Warner.

4. A commission for customers Brand X signups brought to Time Warner will be negotiated. This commission will be offered on a non-discriminatory basis and will be the same as the commission paid to Time Warner's affiliates by Time Warner.

5. Time Warner will provide Brand X Internet sales department access to customers lists for sales purposes on a non-discriminatory basis as it provides this information to its in-house or affiliated ISP's. This information will include, at a minimum, a monthly list of all customers, and a monthly list of new customers, in comma delimited or equivalent format, including name, address, and phone number of this customer. This information will be used by Brand X only for the purpose of advertising Internet Services and will not be sold or publicly released.

Technical proposal

1. Time Warner customers who select Brand X as their ISP would be provided Internet Access through Brand X over the Time Warner lines. This traffic would travel from the customer location, over Time Warner lines, to the Brand X co-located equipment at the Time Warner head end office, from there to the Brand X office in Marina del Rey, and from there out to the Internet.

2. Time Warner customers who select Brand X as their ISP would receive email and web services from Brand X.

3. Brand X would be allowed to co-locate one 19 rack of equipment at each Time Warner head end office, and to connect this equipment to the Time Warner network.

4. Brand X would be allowed to bring in T1 or T3 lines to connect this equipment to its offices in Marina del Rey.

5. Time Warner would agree to route Brand X IP addresses on its network.

6. Time Warner customers who select Brand X as their ISP would not have their traffic routed through Time Warner's ISP affiliate, would not have their traffic filtered or run through proxy, and would not be required to view advertising or web pages from Time Warner or its affiliates.

7. Time Warner would retain responsibility for lines and would offer installation, support and repair of these lines on a non-discriminatory basis.

Financial Proposal

1. Time Warner customers who select Brand X as their ISP will pay Time Warner a line fee which would be the same regardless of whether they choose Time Warner's ISP affiliate or Brand X as the ISP. This line charge would be added to their cable TV billing.

2. This fee is currently \$10 per month for those who subscribe to cable TV, and free for those who do not subscribe. This fee would be subject to renegotiation, as the current arrangement appears to offer a subsidy, but any fee would be nondiscriminatory and would not depend on the choice of ISP.

3. Time Warner would agree that installation, equipment fees, and other charges, including promotional offers, would be the same regardless of choice of ISP.

3. Time Warner would agree not to subsidize or bundle services. Line charges and television charges would not be used to underwrite or subsidize Internet services, or advertising, sales, or provision of those services. If any such subsidies were offered, they must also be provided to Brand X on equivalent terms.

4. Brand X customers would pay Brand X directly for ISP services at prices to be determined by Brand X Internet.

5. Brand X would pay Time Warner for co-location or other services on terms to be negotiated but not to exceed prices charged for co-location in the Internet Industry by companies such as PSI, Level Three and Exodus. It is understood that the charge for this service is generally not more than \$800-\$1500 per rack.

Terms and Cooperation

1. It is acknowledged that Brand X and Time Warner must cooperate and share information to maximize benefit for both sides. Customer, technical and accounting information will be shared by Time Warner on a non-discriminatory basis and access to this information will not be used by Time Warner to provide advantage to its inside or affiliated ISP. The parties shall treat this information as confidential.

2. Brand X and Time Warner agree to share accounting information without limitation in order to verify that the terms of this agreement have been followed. No reasonable request for accounting information will be denied. The parties shall treat this information as confidential.

3. Brand X and Time Warner agree to share network information without limitation in order to facilitate interconnection. Information to be shared includes network maps, office locations, router configurations, equipment types, standards and documentation. The parties shall treat this information as confidential.

Completion of this agreement

The purpose of this agreement is to outline terms for a formal contract.

Upon agreement, lawyers will commence negotiation of legal details, and a final agreement will be signed within 30 days. Any dispute or failure to agree on terms under this agreement will be resolved by binding arbitration with the arbitrator to be chosen within two weeks and the final decision to be rendered no later than 45 calendar days from the date of request for arbitration.

I hope that you will agree to this proposal, and await your response.

Sincerely,

Jim Pickrell
President
Brand X Internet LLC



August 10, 2000

AT&T Broadband
P.O. Box 5630
Denver, CO 80217-5630

VIA FEDERAL EXPRESS

Jim Pickrell
President
Brand X Internet LLC
927 6th Street
Santa Monica, CA 90403

Dear Mr. Pickrell:

Your letter requesting interconnection at certain of the cable headends of AT&T's affiliate MediaOne has been forwarded to me for response. As you may know, AT&T has publicly stated that it is committed to providing its cable customers with a choice of ISPs when practicable. To this end, AT&T Broadband recently announced technical and operational trials in Colorado and Massachusetts that will test how multiple Internet service providers can offer high-speed, always-on cable Internet service over a hybrid fiber-coaxial network. In the meantime, MediaOne Road Runner customers will continue to enjoy the ability to access all publicly available sites and content that are interconnected through the Internet.

I note that two federal courts have recently rejected claims that cable companies are subject to government-mandated access obligations. As you may know, the FCC will shortly commence a proceeding to evaluate further the issue of government-mandated access. This proceeding would address the legal issues raised by the recent court decisions and assess developments in the marketplace. In announcing this proceeding, the FCC chairman reiterated his clear preference for market forces over government intervention. AT&T strongly agrees. The company should be in a position to discuss appropriate commercial arrangements once it completes its technical and operational trials.

Sincerely,

Douglas G. Garrett
Counsel for AT&T Broadband, L.L.C.

cc: Ruth MacNaughton
Teresa Ono
Glenn Stover
Perry Parks



Recycled Paper

8/4/00

Jim Pickrell
President
Brand X Internet LLC
927 6th Street
Santa Monica, CA 90403
(310) 395-5500
email info@brandx.net

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VP and Assistant General Counsel
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Sincerely,

Jim Pickrell
President
Brand X Internet LLC

August 15, 2000

Mr. Jim Pickrell
President
Brand X Internet LLC
927 6th Street
Santa Monica, CA 90403

Dear Jim:

Re: Broadband Internet Access Service

Thank you for your interest in Time Warner Cable's initiative to offer multiple Internet service providers on its broadband cable systems. As we have stated, we are very committed to providing our customers a choice of ISP's. We are actively seeking to find companies interested in offering Internet services on our broadband cable systems and we appreciate your taking the time to contact us in this regard.

Prior to initiating formal discussions, it would be helpful to receive some additional background information about your company and the specific areas of Time Warner Cable that you are interested in serving. Please provide us with the following information at your convenience:

- General information about your company:
 1. What products does the company offer?
 2. Does the company currently offer any broadband services?
 3. How many customers does the company currently serve?
 4. How long has the company been in business?
 5. What is the ownership structure of the company?
 6. What is the company's current service area?
 7. What is the financial composition of the company?
- List the Time Warner Cable areas that the company wishes to serve. Facilities to the Time Warner Cable headend in these areas will need to be provided by your company.

As soon as we receive the above information, we will provide you with a list of the Time Warner Cable systems in your service areas. Thank you again for your interest in our broadband network and we look forward to hearing from you soon.

Sincerely,

Bonnie Blecha